CF0000061764

(2)

Division Bench (riminal)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR

CRIMINAL APPEAL NO. 1778 /1997

APPELLANT (IN JAIL) : Lachhiman Singh alias Lallu alias Lav Singh, s/o Jalim Singh, aged 35 years, r/o village Deorihapara, P.S.Kota, district Bilaspur (M.P.).

vs.

RESPONDENT : The State of M.P. through P.S. Kota, district Bilaspur(MP).

CRIMINAL APPEAL UNDER SECTION 374(2) OF THE CODE OF CRIMINAL PROCEDURE

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Filed on .....
by Shri Agrawal
..... Advocate

27857
Rlo. A. R.

(34)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.A.1778/97 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

D.B. **HON'BLE SHRI L.C.BHADOO &**
HON'BLE SHRI DHIRENDRA MISHRA, JJ

CRIMINAL APPEAL NO.1778/1997

Appellant : Lachhiman Singh

Vs.

Respondent : State of Madhya Pradesh

Shri Ashok Das Vaishnav, learned counsel for the accused /appellant.

Shri UNS Deo, Additional Public Prosecutor and Shri Akhil Mishra, learned P.L. for the State/ respondent.

ORAL JUDGMENT
(12.01.2006)

Per L.C. Bhadoo,J

By this appeal under section 374(2) of the Code of Criminal Procedure accused Lachhiman Singh Allias Lallu alias Lav Singh, S/o Jalim Singh has questioned the legality of judgment of conviction and order of sentence dated 12/08/1997 where-by learned 8th Additional Sessions Judge, Bilaspur after holding accused/ appellant guilty for the commission of offence under section 302 of I.P.C. for committing the murder of his father namely Jalim Singh sentenced him to undergo imprisonment for life.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.A.1228/97 सन् 200

विरुद्ध

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2. Case of the prosecution in brief necessary for the disposal of this appeal is that accused used to abuse his father after consuming liquor and on the date of incident also he was abusing his father, therefore deceased Jalim Singh went to P.W. 4 Bhagwan Singh and informed him that his son was abusing him and asked him to advise accused appellant not to do so. On this Bhagwan Singh P.W. 4 and Babulal P.W. 1 along with deceased Jalim Singh went to the house of Jalim Singh where wife of Jalim Singh namely Upasa Bai, daughter of Jalim Singh and son of the daughter of the Jalim Singh and one guest were also present there. Jalim Singh was having a stick in his hand from which he assaulted the guest on a shoulder and he also assaulted accused with the same stick on his head as a result of which blood started oozing out of the injury on the head. On this Bhagwan Singh P.W.4 advised the accused to calm down even if his father has assaulted him and accordingly the matter was settled. Bhagwan Singh P.W. 4 and Babulal P.W. 1 left the house of Jalim Singh. Thereafter, accused brought lathi, started assaulting his father Jalim Singh as a result of which Jalim Sing fell down on the ground and received injury on the head and hand. Jalim Singh was taken to the Police Station, Kota on a tractor by P.W.1 Babulal where he lodged the report at 10 p.m. which was entered in Rojnamcha (Ex.P-21) at serial No. 218 on 5.11.1989 Jalim Singh was sent to Primary Health Centre, Kota for examination of the injuries where Dr. V.K. Khetrapal P.W. 11 of Primary Health Centre, Kota examined Jalim Singh and report (P-7) was prepared. However, Jalim Sing died 11.11.1998 in the Government hospital, Bilaspur while taking treatment, information of which (P-5) was given to City Kotwali, on which

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offence was registered at Police Station, City Kotwali as per P-6. Sub-Inspector R. Tirki (P.W.12) after giving notice (P-13) to Panchas prepared panchanama of body (P-10). Thereafter, body was sent for post mortem examination under P-11. Post mortem of the body of Jalim Singh was conducted by Dr. R. Bhattacharya P.W.5 on 12.11.1989 who prepared the post mortem report P-2. During police custody the accused gave memorandum (P-17) in pursuance of which weapon of offence i.e. lathi was seized under P-16. After completion of investigation the charge sheet was filed in the court of Additional Chief Judicial Magistrate, Bilaspur who committed the case to the Session Judge, Bilaspur from where Additional Sessions Judge, Bilapsur received the case on transfer for trial.

3. In order to establish the charge prosecution examined as many as 13 witnesses. The statement of the accused was also recorded under section 313 of the Code of Criminal Procedure in which he denied the prosecution evidence and pleaded his innocence and false implication in the case.

4. Learned Additional Session Judge after hearing Additional Public Prosecutor and counsel for the accused has convicted and sentenced the accused as mentioned in paragraph one of this judgment.

5. We have heard Ashok Das Vaishnav for the appellant and Shri UNS Deo Additional Public Prosecutor and Shri Akhil Mishra Panel Lawyer for the State.

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6.	The homicidal nature of death of Jalim Singh is not in dispute. As far as involvement of accused/appellant in committing the murder of his father Jalim Singh is concerned, the case rests on the oral dying declaration made by the deceased in presence of P.W.2 Fagun Singh and P.W.9 Mangal Singh in police station, Kota (P-21) in which he has stated that his son Lallu was quarreling with him after consuming liquor on which he went to Bhagwan Singh P.W. 4 and brought him to his house. Bhagwan Singh advised Lallu not to quarrel. However, at about 8.30 p.m. accused Lallu came with lathi and assaulted him i.e. Jalim Singh with lathi on his head and blood started oozing out of the injury on the head and Jalim Singh fell on the ground. Accused also inflicted injury on the right hand of Jalim Singh with lathi. P.W.2 Fagun Singh in paragraph 2 of his evidence has stated that when Jalim Singh was lying on the road he asked to take him to the hotel of Bhagwan Singh on which he took him on a tractor. Jalim Singh informed him that Lallu Singh had assaulted him. In paragraph 4 of his evidence he has further stated that in the police station Jalim Singh stated that Lallu assaulted him. P.W.9 Mangal Singh has also stated in his evidence that on inquiry by the police Jalim Singh stated that Lallu has assaulted him. Therefore, in view of the above dying declaration it is established that accused/appellant Lallu assaulted his father Jalim Singh and this dying declaration was made in presence of these witnesses immediately before the police, and the same inspires confidence on this court.	
7.	Learned counsel for the accused/appellant argued that there was a dispute between father and son and as per the evidence on record in the	

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first instance Jalim Singh assaulted the accused with stick and in the heat of passion all of sudden the accused picked up lathi and assaulted his father and there was no intention to cause death of his own father. More over, incident was of 5.11.1989 whereas deceased Jalim Singh died on 11.11.1989 on account of pus formation in the injury and till then no offence was registered.

8. On the other hand learned Additional Public Additional Prosecutor supported the judgment of conviction and sentence passed by the trial Courts.

9 In order to appreciate the arguments advanced by the learned counsel for the appellant/accused we have perused the prosecution evidence available on record. PW-4 Bhagwan Singh in his evidence has stated that Jalim Singh came to him and informed that his son was quarreling after consuming liquor and requested him to advise his son, on which he along with Jalim Singh went to the house of Jalim Singh where he advised the wife of Jalim Singh and Lallu not to quarrel. On that day guest was also present in the house of Jalim Singh. Jalim Singh being enraged rushed towards some one to assault on which he advised Jalim Singh saying that as he has convened the Panchayat, therefore, not to indulge in quarreling. From the above evidence it is established that there was some dispute going on between father and son and on the fateful day deceased Jalim Singh rushed towards the accused and assaulted him with stick on which the witness advised Lallu to remain calm. Even if Jalim Singh has assaulted him, he should not precipitate the matter further as Jalim Singh

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is his father. But Lallu picked up Lathi and assaulted his father on his head, therefore, from the above facts it is established that Lallu assaulted his father all of sudden, in the heat of passion without premeditation in a sudden quarrel and there was no intention on the part of the accused to commit the murder of his father. Jalim Singh died six days after he sustained injuries, therefore, case is covered with exception 4 of section 300 and the offence against the accused does not travel beyond 304 part II of the IPC. Therefore, we are of the considered opinion that the conviction under section 302 of the IPC and sentence awarded under that section by the trial Court cannot be sustained.

10. In the result, the appeal partly succeeds, conviction under section 302 of the IPC and sentence awarded there under are set aside. Instead thereof the accused is convicted for the offence under section 304 part II of the IPC and sentenced to undergo RI for 10 years.

11. Counsel for the appellant submits that the accused remained in detention after the judgment from 7.2.1996 and during trial also he was in jail from 15.11.1989 to 18.5.1990, thereby he has already served the sentence of more than 10 years which is not disputed by the Additional Public Prosecutor. Therefore, the appellant be set at liberty forthwith if not required in any other case.

Sd/-
L.C. Bhadoo
Judge

Sd/-
DHIRENDRA MISHRA
Judge

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